No. 12675

In The United States
COURT OF APPEALS
For the Ninth Circuit

M. P. MULLANEY, Commissioner of Taxation, Territory of Alaska,

Appellant,

v.

LUTHER C. HESS and ALASKA JUNEAU GOLD MINING CO., a corporation,

Appellees.

Upon Appeal from the District Court for the Territory of Alaska, Fourth Division

BRIEF FOR APPELLANT

J. GERALD WILLIAMS
Attorney General of Alaska

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Juneau, Alaska

For Appellant.

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INDEX

CITATIONS

Cases

Statutes

Miscellaneous

NOTE

The relevant portions of Chapters 10 and 88, Session Laws of Alaska, 1949, are set out in Appendix A. The uniformity clause of Section 9 of the Alaska Organic Act (48 USCA §78, pocket part) and Subsection (a) of §48-7-1, Alaska Compiled Laws Annotated, 1949, are set out in Appendix B.

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OPINION BELOW

The opinion of the district court is reported in 91 F. Supp. 139.

JURISDICTION

This is a suit to enjoin the appellant from enforcing the provisions of the Alaska Property Tax Act, Chapter 10, Session Laws of Alaska, 1949, as amended, and to have declared invalid the Act in its entirety. Judgment and decree was entered on August 1, 1950, declaring the Act invalid in its entirety, with the exception of the amendment thereto contained in Chapter 88, Session Laws of Alaska, 1949, and granting a permanent injunction (R. 89-92). An appeal was taken on August 7, 1950, by filing with the district court a notice of appeal (R. 88). The jurisdiction of the district court was invoked under the Act of June 6, 1900, c. 786, §4, 31 Stat. 322, as amended, 48 USCA §101. The jurisdiction of this court rests on §1291 of the New Federal Judicial Code.

QUESTIONS PRESENTED

1. Whether Chapter 10, Session Laws of Alaska, 1949, known as the Alaska Property Tax Act, is a valid exercise of the taxing authority of the Territory of Alaska.

2. Whether an injunction should have been issued enjoining the enforcement of the provisions of the Alaska Property Tax Act.

STATEMENT

This action was instituted by appellee, Luther C. Hess, on December 2, 1949, to enjoin the enforcement of the Alaska Property Tax Act, Chapter 10, Session

Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and to have declared invalid the Act in its entirety (R. 2-17). In addition to appellant herein, defendants named in the action were the City of Fairbanks and the Fairbanks Independent School District, neither of whom are parties to this appeal. Appellee, Alaska Juneau Gold Mining Company, intervened in this action on January 13, 1950, (R. 30) and in its complaint in intervention prayed for the same relief as sought by appellee, Luther C. Hess (R. 18-29).

Appellee, Luther C. Hess, is a resident of the Territory of Alaska and the owner of certain real properties located within the City of Fairbanks, Alaska, and the Fairbanks Independent School District, and is also the owner of a certain group of patented and unpatented mining claims located in territory outside the boundaries of any municipality or school district (R. 74). Appellee, Alaska Juneau Gold Mining Company, a West Virginia corporation, owns property in the City of Juneau, Alaska, the Juneau Independent School District, the City of Douglas, Alaska, the Douglas Independent School District, and in territory not included within any municipality or school district (R. 75-78). All of the property of appellees is taxable under the provisions of the Alaska Property Tax Act.

The district court granted a preliminary injunction on January 30, 1950, enjoining appellant, until final determination of the cause, from collecting any of

the taxes imposed by the Act upon any property owned by appellees in the Territory of Alaska (R. 33-35). Thereafter trial was had on May 15, 1950, at which time appellees introduced evidence in support of their complaints (R. 158-163, 124-138, 96-122), and appellant introduced evidence in support of the affirmative allegations contained in his amended answers to the complaints (R. 163-164, 138-150). On June 19, 1950, the court issued its opinion holding that the whole of Chapter 10, Session Laws of Alaska, 1949, was invalid except as to the tax levied on boats and vessels under Chapter 88, Session Laws of Alaska, 1949 (R. 49-72).

Findings of fact and conclusions of law were filed in accordance with the court's opinion (R. 72-87), and on August 1, 1950, judgment and decree was entered declaring Chapter 10, Session Laws of Alaska, 1949, to be invalid, except as to boats and vessels under Chapter 88, Session Laws of Alaska, 1949, and a permanent injunction was issued enjoining the appellant from enforcing the provisions of Chapter 10, Session Laws of Alaska, 1949 (R. 89-92). This appeal followed (R. 88).

SPECIFICATIONS OF ERROR

The specifications of error and the points relied on by appellant may be summarized as follows:

1. The court erred in holding that the tax levied by Chapter 10, Session Laws of Alaska, 1949, is invalid as not being valued and uniform as required by

Section 9 of the Organic Act of the Territory of Alaska. (R. 85, 151).

2. The court erred in holding that the tax levied under Chapter 10, Session Laws of Alaska, 1949, is invalid as being a taking of property without due process of law, forbidden by the Fifth Amendment to the Constitution of the United States. (R. 85, 151-152).

3. The court erred in holding that the tax levied by Chapter 10, Session Laws of Alaska, 1949, upon unimproved, unpatented mining claims which are not producing and upon unimproved non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is contrary to Section 9 of the Organic Act of Alaska, as amended by the Act of Congress of June 3, 1948, and is therefore invalid as not valuing such claims according to their true and full value, nor at the price paid the United States therefor, nor at a flat rate fixed by the legislature. (R. 84-85, 152-153).

4. The court erred in holding that the last sentence in Section 11 of Chapter 10, Session Laws of Alaska, 1949, which provides "the true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor" is invalid as being contrary to the provisions of Section 9 of the Organic Act of Alaska. (R. 85, 153)

5. The court erred in holding that appellees have no adequate remedy at law, and that the enforcement of Chapter 10, Session Laws of Alaska, 1949, would have resulted in irreparable injury to appellees, and that the bringing of this action prevented a multiplicity of actions. (R. 84, 153)

6. The court erred in holding that the liens impressed by the tax levied under Chapter 10, Session Laws of Alaska, 1949, upon the properties of appellees situated in the Territory of Alaska outside of municipalities, independent and incorporated school districts, and public utility districts, constitute a cloud on the titles of appellees to such properties which they are legally entitled to have removed in a court of equity. (R. 85-86, 154)

7. The court erred in making and entering its Conclusion of Law No. VII, which reads as follows: "That the temporary injunction heretofore issued in this cause restraining the defendant M. P. Mullaney, Commissioner of Taxation, and his agents, deputies, official representatives, and all persons acting under him, from enforcing the provisions of Chapter 10, Session Laws of Alaska, 1949, against the property (other than boats and vessels) of plaintiff and intervenor herein, should be made permanent and the bonds given pursuant to the requirements of the preliminary injunction exonerated and the sureties thereon discharged." (R. 86, 154)

8. The court erred in entering judgment and decree in favor of appellees and permanently enjoining appellant from collecting or attempting to collect from appellees the tax imposed by Chapter 10, Session Laws of Alaska, 1949, upon property owned by them in the Territory of Alaska outside of municipalities and independent and incorporated school districts. (R. 90, 154-155)

SUMMARY OF ARGUMENT

I.

The Alaska Property Tax Act does not contravene the uniformity clause of Section 9 of the Alaska Organic Act, which provides that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof . . ." (Act of Aug. 24, 1912, c. 387, §9, 37 Stat. 514, as amended, 48 USCA §78.)

A. The ultimate objective to be achieved in taxation is equality in the distribution of the burden of government. If this is true, the constitutional requirements of uniformity should not be applied as a narrow restrictive limitation on the power of the legislature to classify for purposes of taxation, but should rather be used as a general objective and guide for the legislature in the exercise of its taxing authority. This would allow reasonable classifications which indeed are necessary in order to achieve real equality in taxation, and sufficient protection against undue

discrimination would be found in the equal protection clause of the Fourteenth Amendment to the United States Constitution. Uniformity and equal protection are, therefore, substantially identical in their requirements, and the arguments here with respect to the alleged inequalities, discriminations and lack of uniformity in the Alaska Property Tax Act should thus be approached with the thought that the validity of the Act must be judged by the same standards of equality and uniformity demanded by equal protection as would be applied in the case of legislation involving excise and income taxes. See *Alaska Steamship Co. v. Mullaney*, 180 F.(2) 805, 817-818.

B. The classification in the Alaska Property Tax Act between (1) incorporated cities and towns and incorporated and independent school districts, and (2) territory outside of such areas, hereinafter referred to as Class I and Class II, respectively, is merely a recognition of, and an attempt to correct, previous inequities between these two classes that existed by reason of the fact that persons in Class II had for many years paid no property taxes and had received greater benefits from the territorial government than those in Class I, and is, therefore, not without reasonable basis and is founded upon "intelligible grounds of policy." *Pacific American Fisheries v. Alaska*, 269 U. S. 269, 278. This general classification, therefore, being sustainable, and standards of equality and uniformity not having been violated, the differences in the methods of assessment, collection and enforce-

ment of taxes between the two classes do not constitute any lack of uniformity since all constituents of each class are treated alike. *Michigan Central R. R. Co. v. Powers*, 201 U. S. 245, 301.

C. The fact that the property tax ordinances of the various cities and school districts in Class I are not identical does not offend constitutional uniformity. The 1% property tax collected within each of those taxing districts is to be used only for that individual district's school purposes and not for the purposes of some other district, and there is thus a direct relation between government burden and benefit in each taxing district unrelated to that extent to each of the others. All those in similar circumstances are treated alike, and this is all that is required by equality and uniformity. *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415.

D. As a practical matter, appellees have not been discriminated against. The tax levied on their property in Class I territory would have been paid, and in approximately the same amount, even in the absence of the Alaska Property Tax Act. As far as is concerned the tax levied on their property in Class II territory, there could be no complaint of discrimination since the owners of property in Class II have not only never before been subject to property taxes, but by reason of owning property therein have received from the territorial government greater benefits than those in Class I.

E. The fact that in Section 11 of the Alaska Property Tax Act the legislature has specified what factors are to be considered in determining the value of property for purposes of the tax does not circumvent the requirement of uniformity that property be assessed according to true and full value. As long as the same method of valuation is applied to all within a division resulting from a classification that is valid, the method chosen is fully within legislative discretion. Moreover, there is in this case neither a disclosure of a plan of discrimination or a showing that in practical operation appellees' property has been intentionally and systematically discriminated against. See *Southern Ry. Co. v. Watts*, 260 U. S. 519, 526; *Charleston Assn. v. Alderson*, 324 U. S. 182, 190-191.

II.

In providing that certain kinds of mining claims are to be valued at "$500.00 per each 20 acres or fraction of each such claim" (Alaska Property Tax Act, §3), the territorial legislature has merely complied with congressional directive as evidenced by the 1948 amendment to §9 of the Organic Act (48 USCA §78, pocket part). If an interpretation of the words "or fraction of each such claim" as meaning that such claims have a value of $25.00 per acre is considered too strained to be justified, then unformity can still be achieved by striking those words under the authority of §45 of the Act, the severability clause. *Electric Bond Co. v. Commission*, 303 U. S. 419, 434; *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 185.

III.

There has been no showing in this case of those special and extraordinary circumstances that will warrant equitable relief by way of injunction. With respect to the taxes on property in Class II that appellees should pay, they have a completely adequate remedy at law to pay the taxes under protest and then bring an action against the Tax Commissioner to recover them back, at which time the validity of the Act could be determined. §48-7-1(a) Alaska Compiled Laws Annotated, 1949. This remedy at law defeats the jurisdiction of equity. *Matthews v. Rodgers*, 284 U. S. 521, 526. With respect to taxes on appellees' property in Class I, although here the refund statute may not be applicable, appellees cannot complain of a lack of an adequate legal remedy because even in the absence of the 1% territorial property tax, the same taxes would have been paid to the cities and school districts under their local tax ordinances. There is also no justification for equitable relief on the ground that such is necessary in order to avoid a multiplicity of actions, for in one suit at law under the provisions of the territorial refund statute (§48-7-1(a), *supra*) there would be afforded complete opportunity for the assertion of appellees' claim as to the invalidity of the Act, and there is nothing to show that more than one suit would be necessary. Cf. *Matthews v. Rodgers*, *supra*, p. 529. Finally, equity jurisdiction cannot be invoked on the theory that an injunction is necessary to remove a cloud from the titles of appellees' property, since there

exists an adequate remedy at law, *Shaffer v. Carter*, 252 U. S. 37, 46, and since appellees, in practical effect, are alleging nothing more than that the tax is unconstitutional—an allegation by itself insufficient to constitute a basis for equitable relief. *Dodge v. Osborn*, 240 U. S. 118, 121-122.

ARGUMENT

I.

THE ALASKA PROPERTY TAX ACT, CHAPTER 10, SESSION LAWS OF ALASKA, 1949, IS A VALID ACT AND DOES NOT CONTRAVENE THE UNIFORMITY CLAUSE OF SECTION 9 OF THE ALASKA ORGANIC ACT.

A. The standards of uniformity and equality demanded by Section 9 of the Alaska Organic Act and by the equal protection clause of the Fourteenth Amendment are essentially the same.

The provisions of the Organic Act of Alaska that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof . . ." (Act of Aug. 24, 1912, c. 387, §9, 37 Stat. 514, as amended, 48 USCA §78)has been given consideration by this court in a previous case involving the validity of the Alaska Net Income Tax Act, *Alaska Steamship Co. v. Mullaney*, 180 F.(2) 805, 817-818, and was in that case held to require no greater measure of equality and uniformity than the equal protection requirement of the Fourteenth Amendment to the United States Con-

stitution. A similar view has been expressed by the United States Supreme Court with relation to a chain store license tax under the uniformity provision of the constitution of West Virginia, *Fox v. Standard Oil Co.*, 294 U. S. 87, 102, and with respect to a tax on royalties from mines under the uniformity clause of the Minnesota constitution. *Lake Superior Consolidated Iron Mines v. Lord*, 271 U. S. 577, 581. It is true that in none of these cases was an *ad valorem* property tax involved, yet in considering the Alaska Property Tax Act as it relates to uniformity, there is no reason why a different rule should be applied. With respect to *ad valorem* property taxes, as well as income and excise taxes, uniformity under the Organic Act of Alaska and equality under the Fourteenth Amendment should be substantially the same.

The real question arising from the problem of regarding uniformity either as more restrictive than equal protection or as substantially the same, is whether the rule of uniformity is to be applied as a narrow restrictive limitation on the right of a legislature to classify in taxation or as a general objective of the legislature—a guide in the exercise of its taxing power. If, as the United States Supreme Court has stated, taxation is the means by which government distributes the burden of its cost among those who enjoy its benefits, *Welch v. Henry*, 305 U. S. 134, 144, and if "the policy of taking cognizance of the obligation of all men who depend upon the maintenance of law and order in a state or territory where

they . . . own property, to bear their fair share of the cost of supporting the government which protects them" has increasingly been given free rein by the Supreme Court, *Alaska Steamship Co. v. Mullaney*, 180 F.(2) 805, 813, then it would appear to follow that the ultimate objective to be achieved in the exercise of taxing power would be fairness of taxation—equality in bearing expenses of government. This being the broad goal of a legislature in taxation, uniformity would logically contemplate rather than forbid the "greatest freedom in classification", *Madden v. Kentucky*, 309 U. S. 83, 88, since true practical equality can only be attained by taxing some property differently from other property. *Adams Express Co. v. Ohio State Auditors*, 165 U. S. 194, 228. It would not then be reasonable to adopt a narrow restrictive interpretation of uniformity as, for instance, permitting classification of property as to its kind but not as to its location (R. 58-59), for to do so would, in effect, be denying the legislature its right to decide how the tax burden can be most equitably distributed —a blow really at the government's vital power to raise revenue for its continued existence. It would be only consistent with the legislature's "full and unlimited power of taxation," *Alaska Fish Co. v. Smith*, 255 U. S. 44, 49; *Pacific American Fisheries v. Alaska*, 269 U. S. 269, 277, that uniformity of taxation be not a narrow specific rule, but a broad objective which the legislature must seek in order to achieve real equality in the distribution of the burden of government. If, when seeking the attainment of such

a goal, the legislature adopts classifications which—whether based on kinds, owners or locations of property—are reasonably related to the legislative objective sought, and not based merely on caprice or fiction, then fairness in taxation will be achieved and standards of equality and uniformity will be recognized and adhered to. *Welch v. Henry, supra,* pp. 144-145; *Tax Commissioners v. Jackson,* 283 U. S. 527, 537-538. Sufficient protection against any undue discrimination will be found in the requirements of equal protection, and there is then no reason for considering Territorial uniformity and Constitutional equality as being other than substantially identical in their requirements. See *Matthews, The Function of Constitutional Provisions Requiring Uniformity in Taxation,* 38 Ky. Law Journal, pp. 65-66 (Nov. 1949); ibid. pp. 203-204 (Jan. 1950); ibid. pp. 516-526 (May 1950).

If then, uniformity under the Organic Act requires only that a classification be reasonable, and rationally related to a legitimate end of governmental action, *Welch v. Henry, supra,* p. 144, the further requirement in the uniformity clause that "taxes . . . shall be levied and collected under general laws" adds nothing to the requirements of equal protection, since a statute is "general" when it applies equally to all within a classification that is based on distinctions reasonably justifying differences in treatment. *Heisler v. Thomas Colliery Co.,* 274 Pa. 448, 118 Atl. 394, 399; *Lelande v. Lowery,* 26 Cal.(2) 224, 157 P.(2)

639, 645; *Manning v. Sims*, 308 Ky. 587, 213 S. W. (2) 577, 586; *Sarlls v. Indiana ex rel. Trimble*, 201 Ind. 88, 166 N.E. 270, 276. It is evident, therefore, that the arguments made with respect to the alleged inequalities, discriminations and lack of uniformity in the Alaska Property Tax Act should be approached with the thought that the validity of the Act must be judged by the same standards of equality and uniformity demanded by equal protection that would be applied in the case of legislation involving excise or income taxes. The fact that there is being considered here an *ad valorem* property tax, rather than a case where uniformity was construed in its application to either an income or excise tax, *Alaska Steamship Co. v. Mullaney*, *Fox v. Standard Oil Co.*, *supra*, is no reason for the establishment of a different rule.

B. The legislature has adopted a broad classification in the Act which fully satisfies standards of equality and uniformity.

The Alaska Property Tax Act levies a 1% tax on all real and personal property within the Territory. The legislature, in Section 4 of the Act, has prescribed a broad, general classification by drawing a distinction between (1) property located within incorporated cities and towns, independent school districts, incorporated school districts, and public utility districts; and (2) property located in territory outside of such areas—these two classes being hereinafter referred to as Class I and Class II, respectively. Within Class I the 1% tax is to be assessed, collected and

enforced according to the property tax ordinances of the municipalities and districts, whereas in Class II the 1% tax is to be assessed, collected and enforced according to specific provisions contained in the Act. Moreover, every incorporated city and town, not part of an independent school district, which by territorial law constitutes a "city school" (§37-3-1, §37-3-32, Alaska Compiled Laws Annotated 1949) and "incorporated school districts" which are formed from a town, village or settlement outside of an incorporated town (§37-3-11 Alaska Compiled Laws Annotated 1949), are permitted by the Act to retain the 1% tax levied thereunder and assessed and collected by the tax collection authorities of such districts. In the third type of school district, the "independent school district", which consists of a combination of an incorporated city and its adjacent settlement (§37-3-41 Alaska Compiled Laws Annotated 1949), the situation is slightly different. There the 1% tax on property within the city is turned over to the city, and it in turn pays a portion of this money to the school board of the independent school district. The 1% tax collected on property within the independent school district but outside of the municipal limits is turned over to the school board of the school district, and it retains for school purposes that portion which represents a levy equal to that which would have to be made within the city to raise its share of school expenses, up to and including the maximum levy under the Act of 10 mills. However, if the city's share of school expenses represents a levy of less than 10 mills, then the school

district's share would have to be based upon the same levy, and out of the total 10 mills collected by the school board on property within the district but outside of city limits, the board must remit to the Territory the difference between the 10-mill levy and that levy which was necessary to raise the school district's share of school expenses. With respect to public utility districts, the taxes collected therein are to be handled in a like manner to those collected in cities.

There thus exists a situation where the 1% Alaska Property Tax, levied on all property within Class I, is retained by the municipalities and school districts after being assessed and collected according to the provisions of their respective property tax ordinances, each of which differs in some particulars from the others; and that levied upon property in Class II is retained by the Territory after being assessed and collected according to the provisions contained in the Alaska Property Tax Act, which differ considerably from the provisions of all of the city and school district ordinances. This, it is claimed, is so offensive to constitutional standards of equality and uniformity that the Act must fail in its entirety.

When the legislature divided property within the Territory into two separate classes, it was doing nothing more than exercising the freedom of classification that it possessed. *Madden v. Kentucky*, 309 U. S. 83, 88. From the evidence adduced on behalf of appellant, it is seen that for many years there has been contained in the territorial laws providing for the

establishment and maintenance of public schools in Alaska a classification similar in form to that contained in the Property Tax Act. There the incorporated towns and cities, incorporated school districts and independent school districts (all being referred to generally as "incorporated school districts") (R. 140) received different treatment from the Territory than did the rural schools located in territory outside of such municipalities and districts. Territorial funds, having for their source contributions by way of other taxes and various license fees applicable on an equal basis to persons residing in both areas, were used to give complete support to the rural schools and only approximately two-thirds support to the incorporated schools (R. 141-150). The remaining one-third for the latter had to be raised by local taxes imposed upon persons and property residing and located within the incorporated school districts, taxes which persons and property in rural communities did not have to pay. Although this classification in form resembles that adopted in the Act, the result was entirely different. Under the school system, those residing and owning property within Class I were discriminated against instead of being favored, and those residing in Class II received, by reason of such residence, greater benefits from the territorial government than did taxpayers in Class I. This in itself would afford a basis for the classification adopted in the Act since it could well have been the intention of the legislature to remove such existing inequities, and in effect, that is what has been done. Every incorporated school dis-

trict can now utilize for the support of its schools the funds raised from the 1% territorial tax on property within its limits, while in Class II territory the tax cannot be retained but must be turned over to the territorial treasury. This procedure, then, instead of being a discrimination against persons in Class II territory, accomplishes the removal of a discrimination against those in Class I which existed before the Property Tax Act became law, and moreover, reasonably has the beneficial effect of encouraging community responsibility in those towns and villages where no local contribution was required toward the support of schools, an effect related to the common good. Such legislative action is thus reasonably related to a permissible policy of taxation and to a legitimate end of government action. Cf. *Roberts & S. Co. v. Emmerson*, 271 U. S. 50, 57; *Rapid Transit Corp. v. N. Y.*, 303 U. S. 573, 580, 587; *Carmichael v. Southern Coal Co.*, 301 U. S. 495, 512; *Aero Transit Co. v. Georgia Comm'n.*, 295 U. S. 285, 291; *Watson v. State Comptroller*, 254 U. S. 122, 124-125; *Welch v. Henry*, 305 U. S. 134, 144; *Dissenting opinion of Mr. Justice Stone* in *Colgate v. Harvey*, 296 U. S. 404, 439. At the very least, a state of facts can reasonably be conceived to justify the difference of treatment between the two classes, *Tax Comm'rs. v. Jackson*, 283 U. S. 527, 537, and this excludes the possibility that there is anything contained in the classification which indicates a hostile or oppressive discrimination against any particular class of persons or property. *Travelers' Insurance Co. v. Connecticut*,

185 U. S. 364. In taxation where classifications may by validly grounded on the theory of equality of a distribution of governmental burden, a distinction such as is contained in the Act which recognizes previous inequities and lack of uniformity and attempts to correct such situation, is not without reasonable basis and certainly is founded upon "intelligible grounds of policy." *Pacific American Fisheries v. Alaska*, 269 U. S. 269, 278. Equal protection, therefore, being not denied, there is no ground for the contention that the classification results in a lack of uniformity or a violation of the requirement that taxes shall be levied and collected under general laws.

It is, of course, conceivable that this method of accomplishing the legislative objectives will not appear to some to be the wisest and most equitable, but it is enough that the relation between means and end is not wholly vain or illusory. *Williams v. Mayor*, 289 U. S. 36, 42. Even if it were possible to discover certain inequalities as to things embraced within one of the two classes, the groups selected as a whole represent classes within themselves. The equal protection clause does not require the legislature to maintain rigid rules of equal taxation, resort to close distinctions, or maintain a precise scientific uniformity. *Welch v. Henry*, *supra*, p. 145; *Lawrence v. State Tax Commission*, 286 U. S. 276, 284-285; *Salomon v. State Tax Commission*, 278 U. S. 484, 491-492. Neither is it a valid objection to the validity of the classification that the revenues derived from the tax on Class II

property might exceed the total monies appropriated by the Territory in any one year for the support of all of the rural schools, or that a taxpayer owning property in Class II territory at a place remote from places where schools are located may claim to receive no benefit related to the object of the classification. Even if it could be shown for what purposes the taxes on Class II property were appropriated by the legislature, it never has been constitutionally necessary that there be a relation between the classification and the appropriation, and that taxes be levied only to the extent that they are used to compensate for the burden on those who pay them. *Carmichael v. Southern* Coal *Co.*, 301 U. S. 495, 521-523; *Rapid Transit Corp. v. N. Y.*, 303 U. S. 573, 585-587; *Thomas v. Gay*, 169 U. S. 264, 279-280. The fact that the tax may exceed the benefits does not make it defective in the absence of a showing that it is palpably arbitrary. *Roberts v. Irrigation Districts*, 289 U. S. 71, 75. Cf. *General American Tank Car Corp. v. Day*, 270 U. S. 367, 373-375.

The classification being sustainable, it is therefore no objection as far as requirements of equality and uniformity are concerned that under the various tax ordinances of the cities and school districts in Class I and under the provisions of the Act as they apply to Class II there are different methods, times and procedures for assessment, different provisions for the imposition of liens and the foreclosure of the same, different periods for redemption of property sold at a

tax sale, different times for payment of taxes and different provisions for interest and penalties on delinquent taxes, and different procedures for equalization of assessments; that discounts may be granted in one taxing unit but not in the other, that intangible personal property is subject to taxation in Class I but not in Class II, that personal liability for nonpayment of taxes on personal property attaches to a taxpayer in Class I but not in Class II, and that there is no equalization of assessments between the two classes. If the classification is proper, then differences such as these are clearly matters of detail within the discretion of the legislature and cannot be denied without imposing undue restraints upon the power of the legislature to adopt classifications. *Thomas v. Gay*, 169 U. S. 264, 282-283; *Michigan Central R. R. v. Powers*, 201 U. S. 245, 300-302; *Foster v. Pryor*, 189 U. S. 325, 332-334; *Western Union Telegraph Co. v. Indiana*, 165 U. S. 304, 309; *Winona & St. Peter Land Co. v. Minnesota*, 159 U. S. 526, 538; *Kentucky Railroad Tax Cases*, 115 U. S. 321, 337-339. As far as Class II is concerned, the same means and methods are applied impartially to all constituents of the class, so that the law operates equally and uniformly upon all persons and property similarly situated. *Michigan Central R. R. v. Powers, supra*, p. 301.

Nor need there be any provisions for equalization of assessments between the two classes of property. *Michigan Railroad Tax Cases*, 138 F. 223, 241, affmd. 201 U. S. 245, 301-302. This is true even though it

may be argued that that part of the Organic Act which requires that "the assessments shall be according to the true and full value . . ." (48 USCA §78, as amended) necessarily requires equalization between the two classes and that this cannot be done because the ordinances of some of the municipalities and school districts make provision for assessment according to "actual value" (R. 98, 103, 108, 120), "true and fair value" (R. 117), and "just and fair value" (R. 103, 108). The answer to this contention is that this requirement of the Organic Act requires no greater measure of uniformity and equality than does the provision requiring taxes to be uniform; therefore, if the classification itself be proper, there is no necessity for having one unvarying rule or basis for determining assessable values applicable to all of the classes. As long as under the standard or basis of valuation applied, all similarly situated are treated alike, standards of uniformity are satisfied. See *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 516.

In addition to its conclusion that the uniformity clause of Section 9 of the Alaska Organic Act had been violated, the district court held that the tax levied under the Act was invalid as being a taking of property without due process of law contrary to the Fifth Amendment to the Constitution of the United States (R. 85). To such an assertion it is sufficient answer that if there is nothing in the legislative scheme of classification in the Act constituting a denial of equal protection, there has been no taking of property with-

out due process of law. *Fox v. Standard Oil Co.*, 294 U. S. 87, 103; *Rapid Transit Corp. v. N. Y.*, 303 U. S. 573, 587.

C. The fact that the property tax ordinances of the various municipalities and school districts in the Territory are not identical does not invalidate the Act.

The objective of a more equitable distribution of governmental burden having been accomplished by the legitimate means of adopting the classification mentioned above, the fact that in Class I the 1% territorial tax is collected and retained by the respective municipalities and school districts in which it is levied, pursuant to the provisions of their individual property tax ordinances, does not contravene standards of equality and uniformity. Although some State constitutions prohibit the legislature from imposing any tax on property within a local subdivision of the state and allow the legislature authority only to vest the taxing power in such local subdivision, there is no such prohibition contained in the Constitution of the United States, the Alaska Organic Act, or any congressional enactments applicable to Alaska—these being the only places where restrictions on the taxing power of the Territory are to be found. *Talbott v. Silver Bow*, 139 U. S. 438, 448; *Territory v. Pinney*, 15 N. M. 625, 114 Pac. 367, 368.

If, therefore, the means adopted to accomplish a permissible end are otherwise valid, it is not a sufficient objection to the validity of the Act that as be-

tween the different municipalities and school districts comprising Class I there may be different times and modes of assessment, different times for payment of taxes, different provisions for penalties and interest on delinquent taxes, and different provisions for equalization of assessments; that discounts may be granted in one taxing unit and not in another, and that there is no equalization of assessments among such local taxing units. If the power to classify in taxation is established, it follows that the legislature may adopt subclassifications by making distinctions having a rational basis within one of the original classes. *Carmichael v. Southern Coal Co.*, 301 U. S. 495, 509; *Featherstone v. Norman*, 170 Ga. 370, 153 S. E. 58, 66. That a rational basis exists here is evident, for if it is accepted that the theory of classification can be supported as a means of distributing the cost of government among those who enjoy its benefits, *Carmichael v. Southern Coal Co., supra*, p. 508, it must also be accepted that the absence of one specific, unvarying rule for the assessment, collection and enforcement of taxes in each of the units comprising Class I, and the absence of equalization among them, is really only consistent with the demands of equality and uniformity. *Louisiana v. Pilsbury*, 105 U. S. 278, 295-296. Although the tax so collected benefits in a general way the Territory as a whole, since schools are governmental and public in nature, it particularly benefits each district in which it is assessed and collected, since it is to be used for that individual district's school purposes and not for the

purposes of some other district. There is then a direct relation between governmental burden and benefit in each taxing district that is unrelated, to that extent, to each of the other taxing districts. All similarly situated are treated alike, and that is all that is required by equal protection. *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415; *Magoun v. Ill. Trust & Savings Bank*, 170 U. S. 283, 293, 299-300.

D. Appellees have not been the victims of any unconstitutional discrimination.

The chief argument against the validity of the Act is that it is totally lacking in uniformity. When such a contention is made, what is really being said is that the Act contains invalid classifications; and a classification in a taxing statute is invalid for one reason, that is, because one of the classes is treated unfairly or discriminated against as compared to the treatment given to other classes. Looking then at the basis of the contention that the Act violates uniformity requirements, it is difficult to find wherein appellees have been discriminated against or treated unfairly. As far as is concerned appellees' property within Class I, the taxes that have been paid to the various municipalities and school districts would have been paid even in the absence of the Alaska Property Tax Act, and pursuant to the provisions of the various tax ordinances as they existed before. Therefore, it cannot now seriously be contended that appellees are injured by lack of uniformity on the ground that the tax ordinances of the various cities and school dis-

tricts comprising Class I are not identical in their provisions for assessment, penalties, interest and discounts, and that there is no equalization of assessments between the various cities and districts. No such contention was ever made before the passage of the Act for the reason that there would have been no basis in law for such an argument. Uniformity and equality in taxation have never demanded that one unvarying rule for the assessment, collection and enforcement of taxes be applied to local taxes for local purposes. *Louisiana v. Pilsbury*, 105 U. S. 278, 295. Therefore, if there were no lack of uniformity in this respect before the passage of the Act, there can be none now.

With respect to the 1% tax on appellees' property in Class II, which is paid directly into the territorial treasury presumably to be used for general territorial purposes, the only possible discrimination against the taxpayer in Class II that could be alleged would be that those residing and owning property within the municipalities and school districts of Class I would receive benefits from a fund to which they as a class did not contribute, since their tax is retained by the municipality or school district to which it is paid. However, not only have persons in Class II never before been obliged to pay property taxes, as those in Class I have for many years, but by reason of owning property in territory outside of municipalities and school districts, they received from the Territory greater benefits than did the residents of the cities

and school districts. The distribution of the tax burden by now placing it in part on a special class, which by reason of previous legislative policy had received greater benefits than those of another class and had escaped burdens to which those of the other class had been subject, is certainly not a denial of equal protection. *Welch v. Henry*, 305 U. S. 134, 144. Not only is the practical operation of such a procedure not injurious to appellees, but there is nothing contained therein which discloses any purpose or plan to discriminate against them. Cf. *General American Tank Car Corp. v. Day*, 270 U. S. 367, 373-375. There being, therefore, no injury to or discrimination against appellees by reason of their owning property either in Class I or Class II territory, it follows that the classification adopted by the legislature is valid and does not violate the uniformity clause of the Alaska Organic Act.

E. The procedure for determining assessable values as set forth in Section 11 of the Act does not violate uniformity requirements and is therefore valid.

In the Organic Act of Alaska it is provided not only that taxes shall be uniform upon the same class of subjects, but that "the assessments shall be according to the true and full value thereof . . ." (Organic Act, §9, 48 USCA §78, *supra.*) This latter requirement should require no greater measure of uniformity and equality than the provision that taxes shall be uniform upon the same class of subjects, since the reason for adopting "true and full value" as the

standard for valuations is as a convenient means to an end—the end being equal taxation. *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 516. This being true, it follows that if a classification in a taxing statute is otherwise valid and reasonable, it will not fail for lack of uniformity because an identical standard for valuations is not used for all classes. All that is required is that the same standard be applied to all similarly situated. *Greene v. Louisville & I. R. Co.*, *supra*, p. 516.

It makes no difference, therefore, what the legislature specifies is to be considered in determining the value of property for purposes of taxation, for as long as the same method is applied to all within a class, the one chosen is entirely within legislative discretion. The territorial legislature, in Section 11 of the Act, has exercised this discretion, and there is nothing therein which is unconstitutional or invalid. First of all, no departure has been made from the requirements of the Organic Act, since it has been specifically provided in the first sentence of this section that "property shall be assessed at its full and true value in money . . ." (Ch. 10, Session Laws of Alaska, 1949, §11); and the fact that in the last sentence of Section 11 the term "true value" is defined without including in such definition "full value" is not reasonably any indication of the legislature's intent to contradict its declaration in the first part of that section and have property valued not at "full value" but only at "true value." Secondly, there is no lack of uni-

formity in this method of valuation, since there not only is no disclosure of a plan or purpose to discriminate, but in practical operation the provisions of Section 11 have no such effect. It is true that a taxpayer would be discriminated against if his property were assessed at one value while other property of the same class was undervaluated. But this would be true only if it were shown that such undervaluation was intentional and systematic, a showing which is totally absent from the record in this case. *Southern Ry. Co. v. Watts*, 260 U. S. 519, 526; *Charleston Assn. v. Alderson*, 324 U. S. 182, 190-191.

II. THE PROVISIONS FOR THE TAXATION OF MINING CLAIMS PURSUANT TO SECTION 3 OF CHAPTER 10, SESSION LAWS OF ALASKA, 1949, ARE NOT INVALID.

In 1948 Congress amended Section 9 of the Alaska Organic Act by providing that with respect to unpatented mining claims and nonproducing patented mining claims, the assessments thereof need not be according to true and full value but that such claims could be valued either at the price paid the United States therefor or at a flat rate fixed by the legislature. (Act of Aug. 24, 1912, c. 387, §9, 37 Stat. 514, as amended June 3, 1948, c. 396, 62 Stat. 302, 48 USCA §78, pocket part.) The purpose of making such an exception to the general rule that all property should be assessed according to true and full value thereof was, as stated in the Report of the

United States Senate on the bill which contained this provision, because

> ". . . so far as can be ascertained, no formula has yet been devised by means of which the value of an unpatented and nonproducing patented mining claim can be fixed, without utilizing explorative techniques by competently trained engineers . . ." (Senate Report No. 1272, May 12, 1948, 1948 U. S. Code Congressional Service, at pp. 1684-1685.)

In enacting Chapter 10, Session Laws of Alaska, 1949, the Alaska legislature recognized this explicit declaration of Congressional intent and provided that "the assessed value of unimproved, unpatented mining claims which are not producing, and non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim . . ." This provision, it is asserted by appellees and held by the trial court, is invalid because "the tax on mining claims is not at a flat rate and the assessment is not according to the true and full value thereof required by the Organic Act." (R. 84-85)

Since the ores which constitute the wealth of mining claims are hidden underground and the value of such property cannot thus be determined in the ordinary way, a situation which was recognized by Congress when it considered the amendment to Section 9, (Sen-

ate Report No. 1272, *supra*), it was perfectly reasonable to provide for taxation of unproducing mining claims at a flat rate, *South Utah Mines & Smelters v. Beaver County*, 262 U. S. 325, 330, and thus constitute such property a separate class for purposes of taxation. Moreover, if Congress with its plenary power to legislate for the Territory, *Binns v. United States*, 194 U. S. 486, 491-492, has the right to provide that territorial taxes shall be assessed according to true and full value, it necessarily has the power and authority to either do away with such requirement entirely or else modify it to the extent that it has done in the above mentioned amendment.

The "flat rate" at which particular classes of mining claims are to be valued, which the territorial legislature in its legitimate exercise of discretion has chosen, is "$500.00 per each 20 acres or fraction of each such claim." The words "or fraction of each such claim" are ambiguous, for it is difficult to determine whether it is meant (1) that such claims have an assessed value of $25.00 per acre, so that a claim of 2½ acres, for example, would be valued at $62.50, or (2) that every such claim, regardless of its size, is to be valued at $500.00. The latter construction of this provision was adopted by the lower court (R. 52), but the former being more consistent with principles of equality and uniformity should govern, since it is a fundamental rule that courts will adopt that construction of a statute which will uphold its validity. *Corporation Commission v. Lowe*, 281

U. S. 431, 438; *South Utah Mines & Smelters v. Beaver County, supra*, p. 331; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 546. At the very least, even if the first construction should be considered too strained to be justified, uniformity could be achieved by striking the words "or fraction of each such claim" under the authority of the severability clause, Section 45 of the Act. See *Electric Bond Co. v. Commission*, 303 U. S. 419, 434. Such action would be justified, since it cannot be assumed that the legislature would have been satisfied to have sacrificed the entire Act in the event the words "or fraction of each such claim" should be interpreted in such a manner as to reach an unfair result. *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 185.

III. THE ISSUANCE OF THE INJUNCTION RESTRAINING THE ENFORCEMENT OF CHAPTER 10, SESSION LAWS OF ALASKA, 1949, WAS NOT JUSTIFIED SINCE APPELLEES HAVE NOT SHOWN THOSE SPECIAL AND EXTRAORDINARY CIRCUMSTANCES NECESSARY TO BRING THIS CASE UNDER ANY OF THE RECOGNIZED HEADS OF EQUITY JURISDICTION.

Recognizing from long exerience that the payment of taxes upon which government depends for its continued existence is often enforced against a reluctant and adverse sentiment, and being sensible of the evils to be feared if citizens can escape their lawful burden by the use of injunctions to interfere with the collection of taxes, the courts have established well settled

rules as to when the interposition of a court of equity is warranted. It is not sufficient for a taxpayer merely to allege that the taxing statute is unconstitutional and invalid, but he must show special and extraordinary circumstances that bring his case under one of the recognized heads of equity jurisdiction. *State Railroad Tax Cases*, 92 U. S. 575, 613-615; *Miller v. Nut Margarine Co.*, 284 U. S. 498, 509. Appellees have recognized these limitations by allegations of irreparable injury on the grounds that (1) there is no adequate remedy at law, (2) there is a danger of multiplicity of actions, and (3) clouds upon their titles to their real property would be created (R. 14-16). These special circumstances, however, upon which appellees base their right to obtain injunctive relief are more apparent than real, and therefore do not justify the issuance of an injunction in this case.

(1) As far as are concerned the taxes which appellees would be obliged to pay under the Act on their property in Class II areas, a territorial statute provides a legal remedy for payment of taxes under protest and recovery of such taxes if the taxpayer "recovered judgment against the Tax Commissioner for the return of such tax, or where, in the absence of such judgment it shall become obvious to the Tax Commissioner, that such taxpayer would obtain judgment against the Tax Commissioner for recovery of such tax if legal proceedings therefor were prosecuted by him . . ." (§48-7-1(a) Alaska Compiled Laws An-

notated 1949). A procedure such as is available here will defeat the jurisdiction of equity to enjoin the collection of the tax, *Matthews v. Rodgers*, 284 U. S. 521, 526, in the absence of any further showing that such remedy is not adequate. *Stratton v. St. L. S. W. Ry. Co.*, 284 U. S. 530, 534.

Such a remedy is not inadequate because it may be alleged that the Territory is insolvent and that even if a voucher were issued by the Tax Commissioner under the provisions of the refund statute mentioned above, it may not be paid promptly because of a lack of funds in the territorial treasury. On the record of this case there is a complete absence of any evidence indicating what the present status of the territorial treasury is, and appellees' guess as to the future ability of the Territory to pay its debts cannot reasonably cause the legal remedy to fail for lack of completeness and certainty. Cf. *Equitable Life Assurance Society v. Brown*, 213 U. S. 25, 50. It would indeed be a strange procedure to measure the adequacy of a remedy at law by certain nebulous conjectures as to what the condition of the government treasury would be at some indefinite future time. Cf. *Huston v. Iowa Soap Co.*, 85 F.(2) 649, 655, cert. denied 299 U. S. 594; *Casco County v. Thurston County*, 163 Wash. 666, 2 P.(2) 677, 679.

For a like reason the remedy does not fail because of a prediction that the Attorney General and the Treasurer of the Territory may possibly decide not to approve the refund voucher issued by the Tax Com-

missioner under the provisions of the territorial refund statute, §48-7-1(a) *supra*. It is not reasonable to assume that either of these territorial officials will refuse to approve such a voucher when either a judgment has been recovered against the Tax Commissioner for recovery of an illegal tax or when it is obvious that such a judgment would be recovered had legal proceedings been brought. There is no presumption that government officials will act arbitrarily and without reason and will not properly discharge their duties. *Michigan Central R. R. Co. v. Powers*, 201 U. S. 245, 295-296.

It is true that the refund statute does not make any provision for payment of interest and that the United States Supreme Court has held that a failure to pay interest on taxes illegally exacted causes the statutory remedy for recovery of taxes paid under protest to be inadequate. *Educational Films Corp. v. Ward*, 282 U. S. 379, 386. In that case, however, the refund was expressly without interest, whereas so far as appellant has been able to ascertain, no court in Alaska has ever decided in a case where the issue was properly presented, whether or not interest on tax refunds would be allowed under the territorial statute. It is entirely conceivable, therefore, that if a taxpayer were to recover judgment against the Tax Commissioner, interest would be allowed, particularly in view of the apparent weight of authority that interest is recoverable on tax refunds upon general principles even in the absence of statutory authority

therefor. (See annotations in 57 A.L.R. 357, 76 A.L.R. 1012, 112 A.L.R. 1183.) However, since that problem was not presented to the trial court in this case by a person seeking to obtain interest on a tax refund, and therefore not presented upon a state of facts necessitating a decision thereon, it should not have been decided at all. See *Ashwander v. Tenn. Valley Authority*, 297 U. S. 288, 346. Consequently, the absence in the territorial refund statute of provisions for interest should not necessitate the construction that interest would not be recoverable in a hypothetical case where it might be asked for, and is no ground for the conclusion that this remedy at law is not adequate.

With respect to the taxes that appellees have paid to the cities and school districts in Class I, the territorial refund statute evidently has no application. However, this circumstance does not justify the issuance of the injunction because first, appellees have paid such taxes evidently without protest (R. 8, 21) and there could be no point in enjoining the collection of taxes already paid; and secondly, appellees would have paid substantially the same taxes even in the absence of the Alaska Property Tax Act since the resolutions of the cities and school districts, with the exception of the Juneau Independent School District. (R. 101-102) show that no part of the territorial 1% tax was assessed and collected over and above that which was levied, assessed and collected for school and municipal purposes pursuant to the provisions of

the respective property tax ordinances (R. 78-79, 97, 107, 111, 114-115, 118).

(2) There was no justification for the interposition of equity in this case on the ground that an injunction is necessary in order to avoid a multiplicity of actions (R. 84). Since, as is noted above, appellees have paid their taxes to the cities and school districts without protest, and since, with the exception of the Juneau Independent School District, the same taxes would have been paid even in the absence of the Alaska Property Tax Act, there would be no occasion for bringing suits against any of those cities and school districts if the Act were to be found invalid. In a single suit at law brought by either of the appellees against the Tax Commissioner to recover taxes on their property in Class II territory, the validity of the Act could be determined; and there is nothing indicating that more than one suit would be necessary. Cf. *Matthews v. Rodgers*, 284 U. S. 521, 529. Also, the possibility that other taxpayers may wish to bring similar actions does not justify injunctive relief. The jurisdiction of equity to avoid a multiplicity of actions is restricted to cases where there would otherwise be some necessity for suits between the same parties involving like issues of fact or law and not to cases where the appellant might be sued by persons other than appellees. *Matthews v. Rodgers, supra*, pp. 529-530; *Douglas v. Jeannette*, 319 U. S. 157, 165.

(3) Equitable jurisdiction cannot be properly invoked on the ground that there have been or will be created clouds on the titles of appellees to their real property. This exception to the rule that equity will not enjoin the collection of taxes is applicable only when there is no adequate remedy at law, *Shaffer v. Carter*, 252 U. S. 37, 46, for when such remedy is available, the claim that a cloud upon title is created is really alleging no ground for equitable relief independent of the mere assertion that the tax is unconstitutional—an allegation which is insufficient by itself to constitute a basis for equitable jurisdiction. *Dodge v. Osborn*, 240 U. S. 118, 121-122. Cf. *City Council of Augusta, Ga., v. Timmerman*, 233 F. 216, 218.

CONCLUSION

The paramount objective to be achieved in taxation is equality—fairness in distribution of the burden of government among those who enjoy its benefits. This being true, the provision in the Alaska Organic Act requiring taxes to be uniform upon the same class of subjects should not be construed and applied as a narrow, restrictive limitation on the power of the legislature to distribute that burden by adopting various methods of classifying in tax laws. True, practical equality can only be attained by allowing the legislature the greatest freedom in classification; the rule as to uniformity would then appear to contemplate rather than forbid any classification which the legislature, in its discretion, decides to adopt—as long as the method chosen is reasonable, not capricious or arbitrary and bears a rational relation to a legitimate end of governmental action. Sufficient protection against any undue discrimination can be found in the concept of equal protection; there is, therefore, no compelling reason for holding that Organic uniformity and Constitutional equality are not identical in their exactions.

Under such an interpretation of uniformity, the Alaska Property Tax Act must stand as a valid exercise of legislative authority. The territorial legislature cannot be said to have acted without reason in imposing a moderate tax on those in one class who for many years have entirely escaped property taxation and who, in addition, have received from the territor-

ial government complete support for public schools; and by favoring those in another class who, in contrast, have for many years paid *ad valorem* taxes and have been obliged to contribute from such local taxes approximately one-third of the total cost of maintaining their public schools. The objective in this classification is clear—to achieve a distribution of governmental burden, more equitable than it existed before—and the relation between means and end is not merely illusory but is real and substantial.

It is, therefore, respectfully submitted: (1) that the decree of the district court should be reversed to the extent that it holds that Chapter 10, Session Laws of Alaska, 1949, except as to boats and vessels under Chapter 88, Session Laws of Alaska, 1949, is invalid; and (2) that the case should be remanded to the district court for entry of a decree declaring Chapter 10, Session Laws of Alaska, 1949, to be valid in its entirety, dissolving the permanent injunction, and dismissing appellees' complaints.

Respectfully,

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APPENDIX A

Chapter 10, Session Laws of Alaska, 1949

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act".

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" include all buildings, Structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include," when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber on patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(1) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of

one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such non-mining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except

that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Sec-

tion 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for education, religious, or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemptions shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE: The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which

constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered,

subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

* * *

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. TO WHOM ASSESSED.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name

of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable.

* * *

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment.

* * *

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplementary assessment rolls

shall be prepared and certified as may be deemed necessary or expedient.

* * *

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment roll, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

* * *

Section 27. NOTICE OF HEARING. Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Section 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

* * *

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District

Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promulgate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

* * *

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one percent per month shall be added on the first of each month until the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

* * *

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

* * *

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to: —

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

* * *

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

* * *

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied

under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

Section 45. SEVERABILITY CLAUSE. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

* * * * * * *

Chapter 88, Session Laws of Alaska, 1949

Section 1. Section 3 of the Alaska Property Tax Act which was House Bill No. 2 of this session of the Legislature, is hereby amended by adding thereto at the end thereof the following language:

> With respect to any boat or vessel engaged in marine service on a commercial basis and subject to the provisions of this Act, the owner of said boat or vessel may elect:
>
> (a) To pay the tax levied hereunder on such boat or vessel on the basis of the value thereof as defined herein, or,
>
> (b) To pay $4.00 per net ton of such vessel's registered tonnage, but in any event the amount payable hereunder, for each such boat or vessel, shall not be less than $20.00 per annum.

Approved March 23, 1949.

APPENDIX B

Act of Aug. 24, 1912, c. 387, §9, 37 Stat. 514, as amended June 3, 1948, c. 396, 62 Stat. 302, 48 USCA §78.

All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and non-producing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof.

Alaska Compiled Laws Annotated, 1919, §48-7-1.

(a) (*Tax paid under protest.*) Whenever any taxes shall have been paid to the Tax Commissioner under protest and such taxes shall have been covered into the treasury, and the taxpayer or taxpayers involved have recovered judgment against the Tax Commissioner for the return of such tax, or where, in the absence of such judgment it shall become obvious to the Tax Commissioner, that such taxpayer would obtain judgment against the Tax Commissioner for recovery of such tax if legal proceedings therefor were prosecuted by him, it shall be the duty of the Tax

Commissioner, if approved by the Attorney General and the Treasurer, to issue a voucher against the general fund of the Territory for the amount of such tax in favor of such taxpayer.

* * *